

90-211

(1)

Supreme Court, U.S.

FILED

AUG 1 1990

JOSEPH F. SCHOL, JR.
CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

UNITED STATES OF AMERICA,

RESPONDENT.

v.

ERIC C. STALLINGS

PETITIONER,

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ERIC C. STALLINGS

Petitioner, Pro Se

Route 1, Box 322-A

Willard, North Carolina



perfix

QUESTION PRESENTED.

Did the Internal Revenue Service have authority to issue a summons on petitioner, Eric C. Stallings a North Carolina State Citizen and a Free Man who is domicile in the State of North Carolina, without consent of stipulation?



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I.R.S. Order No. 24 Rev.1 5-12-867



JURISDICTION.

The judgment of the United States Court of Appeals for the Fourth Circuit was entered May 17, 1990.

Jurisdiction of this court is invoked under Title 28 Section 2101 U.S.C.

The issues to which the petitioner seeks this Court's review involve the legality of an Internal Revenue Service Summons issued without legal authority.

The relevant portions of the Internal Revenue Code Chapter 78, Subchapter A, Section 7602: (a)Authority to summon, etc.

(2)To summon the person..., to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant...

The relevant portions of the United States Code Title 44, Section 3512: Public protection

- Not withstanding any other provision of law, no person shall be subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director, or fails to state that such request is not subject to this chapter.

QUESTION PRESENTED.

Did the Internal Revenue Service have authority to issue a summons on petitioner, Eric C. Stallings a North Carolina State Citizen and a Free Man who is domicile in the State of North Carolina, without consent of stipulation?

It is the position of the petitioner that he is protected by the public protection clause of U.S.C. Title 44, Section 3512. In that no Office of Management

Budget Control Number has been assigned to the Summons Issued by the Internal Revenue and he has never been notified by the Internal Revenue that he is required to keep any records.

The petitioner, Eric C. Stallings respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered on May 17, 1990.

OPINION BELOW

The Court of Appeals entered its Memorandum decision affirming the denial of Petitioner's motion to reverse the District Court's decision on May 17, 1990. A copy of the memorandum is attached as Appendix A.

STATEMENT OF THE CASE

On April 11, 1989 Revenue Officer Maxcy Garrett issued an administrative summons requiring Eric C. Stallings to appear before him on April 24, 1989 at 10:00 a.m. This summons did not display the required Office of Management and Budget control number. On August 7, 1989 the District Court issued an ex parte Order requiring Eric Stallings to comply with the I.R.S. summons. The trial court granted a contempt judgment in favor of the government and the Court of Appeals affirmed that decision.

REASONS FOR GRANTING THE WRIT.

It is necessary that this Court grant a Writ of Certiorari because the Fourth Circuit Court of Appeals has rendered a decision which has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure

by the United States District Court for the Eastern District of North Carolina, so as to call for an exercise of this Court's power of supervision.

ARGUMENT.

The District Court order signed on August 7, 1989, cited 7602 for the authority to issue a summons, and referred to Time and Place Certain. Under Chapter 78, Subchapter A, only one current OMB control number was issued, it being for 26 U.S.C. 7605, Time and Place . 26 C.F.R. 602.101 shows this number to be 1545-0795 and appears on IRS Form 8233, heading, (Exemption from Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual). The District Court order filed January 26, 1990, (Finding of facts) claiming the appellant to be a "citizen and a resident of North Carolina", claiming

authority to issue a summons under Internal Revenue Code 26 U.S.C. Sec. 6012, however this section of the code grants no authority to issue a summons to the appellant, but refers to Subtitle A of the code. Subtitle A imposes the tax on individuals under regulation 1.1-1 (26 C.F.R.). The only current OMB control number assigned to this regulation is 1545-0067 and found on IRS Form 2555, heading, (Foreign Earned Income).

F.R. Doc. 53-7999; Filed, Sept. 15, 1953: Pursuant to the authority vested in me as Commissioner of Internal Revenue, District Directors of Internal Revenue are hereby authorized to require any person, by notice served upon him, to keep such records as shall show whether or not such person is liable to the income tax under chapter 1 of the Internal Revenue Code, and the correct amount of income subject to

tax. Dated: September 11 1953; (Seal) T.
Coleman Andrews, Commissioner

Order No. 24 (Rev.1); Effective date
5-12-86: The Assistant Commissioner
(International) and District Directors of
Internal Revenue are hereby authorized to
require any person, by notice served upon
him, to keep such records as shall show
whether or not such person is liable for
tax under the Internal Revenue Code of
1954. James I. Owens, Deputy Commissioner.

The Government offered no evidence
that the petitioner had been notified or
was required to keep records pursuant to
the Commissioner's Reorganization order
no. 23. The summons did not meet the
requirements of 44 USC Sec. 3501 et. seq.,
and Eric C. Stallings was denied the
protection of 44 USC Sec. 3512.

CONCLUSION

For the foregoing reasons, petitioner, Eric C. Stallings respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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ERIC C. STALLINGS

Route 1, Box 322-A

Willard, North Carolina

Petitioner, Pro Se

July 3d, 1990

APPENDIX "A"

UNPUBLISHED ORDER

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 90-1718

UNITED STATES OF AMERICA; MAXCY GARRETT,

REVENUE OFFICER, Plaintiffs - Appellees,

versus

ERIC C. STALLINGS, Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Franklin T. Dupree, Jr., Senior district Judge. (C/A No. 89-125-7-CIV)

Submitted: May 7, 1990 - Decided: May 17, 1990

Before ERVIN, Chief Judge, and CHAPMAN and WILKINS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Eric C. Stallings, Appellant Pro Se.
Richard Bruce Conely, Assistant United
States Attorney, Raleigh, North Carolina,
for Appellee.

Unpublished opinions are not binding
precedent in this circuit. See I.O.P.
36.5 and 36.6.

PER CRUIAM:

Eric C. Stallings appeals from the
district court's order finding him in
contempt of court. Our review of the
record and the district court's opinion
discloses that this appeal is without
merit. Accordingly, we affirm on the
reasoning of the district court. United
States v. Stallings, C/A No. 89-125-7-CIV
(E.D.N.C. Jan. 26, 1990). We dispense with
oral argument because the facts and legal
contentions are adequately presented in
the materials before the Court and
argument would not aid the decisional
process.

AFFIRMED

APPENDIX "B"

ORDER OF DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

UNITED STATES OF AMERICA, et al., Plaintiff
vs. ERIC C. STALLINGS, Defendant
No. 89-125-CIV-7-D

ORDER ADJUDGING DEFENDANT IN CONTEMPT

In this action the government filed a motion to require the defendant, Eric C. Stallings, to appear and show cause why he should not be adjudged in contempt of the court for his failure to appear and produce records relating to his income and expenses for the tax years 1986 and 1987. The hearing on the motion which was commenced on December 8, 1989 was adjourned to December 22, 1989 and later continued until today, January 26, 1990, at

which time the government appeared through its Assistant United States Attorney, Richard Conely, and the defendant, Eric C. Stallings, appeared pro se. On the basis of the record and the evidence produced at the two hearings the court now makes the following FINDINGS OF FACT

1. Eric C. Stallings is a citizen and resident of Route 1, Box 322-A, Willard, N.C. 28428, which is in the area served by the Wilmington, N.C. office of the Internal Revenue Service of the United States.

2. Sometime prior to April 24, 1989, Stallings was lawfully served with a summons issued by a duly authorized agent of the Internal Revenue Service to appear at its Wilmington office and produce his books, records and papers relating to his income and expenses for the years 1986 and 1987 and to give testimony relating thereto.

3. In obedience to the summons Stallings did appear before Internal Revenue Agent Jeff Schimberg on April 24, 1989 at which time he had with him what appeared to be the requested books, records and papers. However, Stallings refused to allow the agent to examine the documents he had with him unless the agent would agree to grant him immunity from prosecution for his failure to file income tax returns for the years 1986 and 1987.

4. This conference was terminated when the agent told Stallings that he was without authority to grant him the requested immunity, and thereafter there was filed with the court a petition pursuant to 26 U.S.C. Section 7402(b) and 7604(a) to judicially enforce the Internal Revenue summons previously issued and served upon Stallings.

5. On August 7, 1989 this court ordered

Stallings to appear before Revenue Officer Maxcy Garrett on August 28, 1989 and produce the requested books, records and papers and give testimony relating thereto.

6. Stallings appeared as ordered on August 28, 1989 at which time he had with him what appeared to be the same papers which he had brought to the conference on April 24, 1989, but again he declined to submit the documents to the revenue officer for examination.

7. On November 15, 1989 the government filed a motion presently before the court to have Stallings adjudged in contempt for his failure and refusal to comply with the court's order of August 7, 1989 in which order all the findings required by the Supreme Court in United States v. Powell, 379 U.S. 48, 57 (1964), were made.

8. the facts as set forth above remain essentially uncontested by Stallings. Instead he has filed two motions to dismiss the contempt petition, one entitled "Motion to Dismiss for Lack of Due Process of Law and Equal Protection of the Law" and the other entitled "Motion to Dismiss for Lack of Delegated Authority to Issue an Administrative Summons to this Respondent Under the Authority of I.R. Code Section 6012 or 7602."

CONCLUSIONS OF LAW

1. The two motions filed by Stallings in opposition to the government's contempt petition are without legal merit and must be denied.

2. The failure and refusal of Stallings to comply with the court's order of August 7, 1989 constitutes a contempt of this court.

On the basis of the foregoing findings

of fact and conclusions of law it is now
ORDERED, ADJUDGED AND DECREED:

1. That the two motions to dismiss
filed by the defendant Stallings on
December 13, 1989 are denied.

2. That the defendant Stallings shall
be and appear before Officer Jeff
Schimberg of the Internal Revenue Service
at his office in Wilmington, North
Carolina, at 10:00 a.m. on Monday,
February 5, 1990, at which time he shall
produce each and every of the books,
records and papers required of him by the
original Internal Revenue Service summons
in this case and to submit to examination
under oath as to all matters relating to
his taxable income for the years 1986 and
1987 as required by law.

3. That in the event of the failure
of defendant Stallings to comply with this
order that he be committed to the custody
of

the Attorney General of the United States for imprisonment until such time as he does comply with the same.

4. That defendant Stallings pay a fine of \$500.00.

5. That the court recommends to the United States Attorney that the matter of the failure of defendant Stallings to file income tax returns for the years 1986 and 1987 be immediately referred to the grand jury of this district for such investigation and action as may be deemed appropriate in the light of the results of the investigation.

— 6. That in the event it is found that defendant Stallings has in violation of any federal statute, rule or regulation failed to keep and maintain any required books, records and papers relating to liability for the payment of income taxes, that such matter also be referred to the grand

jury for appropriate investigation and action

F.T. Dupree, Jr., United States
District Judge January 26, 1990.

APPENDIX "C"

ORDER OF DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
UNITED STATES OF AMERICA and
REVENUE OFFICER MAXCY GARRETT, Petitioners,
vs.

ERIC C. STALLINGS, Respondent.

No. 89-61-MISC-7-D

PROCEEDING TO ENFORCE SUMMONS

ORDER

Upon petition of the United States of America and Revenue Officer Maxcy Garrett for an order directing Eric C. Stallings to give testimony and produce specifies books, records, and papers of Eric C. Stallings, and it appearing from the petition

and exhibits that a summons was issued pursuant to I.R.C. Section 7602 (26 U.S.C. Section 7602) and served on the respondent on April 11, 1989, directing Eric C. Stallings to give testimony and produce certain books, records and papers at a time and place certain, and it further appearing that he has refused and neglected to testify and to produce all requested books, records, and papers; and it further appearing from the Declaration that:

- 1) The investigation is being conducted for a legitimate purpose;
- 2) The inquiry is relevant to that purpose;
- 3) The information sought is not already in the possession of the Internal Revenue Service; and
- 4) The administrative steps required by the Internal Revenue Service Code have been

followed;

IT IS ORDERED AND DECREED that the respondent, Eric C. Stallings, appear before Revenue Officer Maxcy Garrett at 9:00 a.m. on Mon., August 28, 1989, at the office of the Internal Revenue Service, 272 N. Front Street, Wilmington, North Carolina, and there give testimony and produce for examination the books, records, and papers described in the summons unless prior to that date the respondent files with the court a responsive pleading, supported by affidavits, indicating specific facts from which the Court can infer bad faith or some wrongful conduct by the Internal Revenue Service. if such responsive pleading is timely filed, the respondent need not appear before the Revenue Officer and instead, this matter will be set for hearing before a Untied States Magistrate at

which time the respondent must appear.

IT IS FURTHER ORDERED that the respondent is put on Notice that failure to obey this order may be grounds for civil contempt proceedings against the respondent

IT IS FURTHER ORDERED that a certified copy of this Order, as well as a copy of the Petition and exhibits and affidavits attached thereto, be served upon the respondent by a Revenue Officer with the Internal Revenue Service and that an Affidavit of Service be filed with this Court.

The 7 day of Aug., 1989.

F.T. Dupree, Jr., United States District
Judge

CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing petition for writ of certiorari to the United States Court of Appeals for the Fourth Circuit in the Supreme Court of the United States has been made upon the respondent, United States of America, by mailing a three copies thereof on this 30th day of July, 1990, in an envelope, with postage prepaid, properly addressed as follows:

Richard B. Conely, Sr.
United States Attorney's Office
Post Office Box 26897
Raleigh, North Carolina 27611

also to: —

Solicitor General,
Department of Justice,
Washington, D.C. 20530.

LS/
Eric C. Stallings, Petitioner
Rt. 1, Box 322-A
Willard, North Carolina

